

CONNECTICUT TRUST ASSOCIATION

Barry Horowitz, JD, LL.M.
Founding member

To: Senate Co-Chair Eric D. Coleman
House Co-Chair Gerald M. Fox, III
Senate Ranking Member John A. Kissel
House Ranking Member John W. Hetherington
Honorable Members of the Judiciary Committee

From: Barry Horowitz

Re: RB 6441 An Act Adopting the Connecticut Uniform Trust Code

Date: February 28, 2011

Dear Honorable Committee Members,

My name is Attorney Barry Horowitz and I am a founding member of the Hartford law firm of Nirenstein, Horowitz & Associates, a law firm that exclusively practices in the area of estate planning. I am also a founding member of the Connecticut Trust Association (Association), an association of attorneys, financial advisors and clients dedicated to seeing that inter vivos trusts remain a cost effective alternative to probate in Connecticut. The Connecticut Trust Association has approximately twelve thousand members. As a representative of this Association and law firm, I am writing this testimony to express our concerns regarding aspects of RB 6441 which seeks to adopt the Connecticut Uniform Trust Code (CT UTC).

The CT UTC is an attempt to provide uniform statutory laws for trusts. Its primary goal is to provide default rules where a trust document is silent. This can be beneficial because it provides statutory guidance to trusts while still allowing for a trust to be created in accordance with a person's specific needs and circumstances. However, on occasion the CT UTC goes further and imposes mandatory rules on trust clients that are not beneficial by invading their privacy and providing unhindered judicial scrutiny of estate plans.

First, this bill creates a loss of privacy of trust clients by providing the 'current beneficiary' of a trust shall be kept informed about the administration of the trust (§67(a)(1)). There is no definition of 'current beneficiary' in this bill. A current beneficiary could be anyone, it is not limited to the trust creators, even where the trust

creators have the right to cancel or revoke the trust at any time. Anyone the trust creators name as a possible beneficiary has the right to request any information they wish regarding the trust's assets. As such, the trust creators loose all their financial privacy to all potential beneficiaries.

Additionally, Section 67 mandates that the trustee send to the 'current beneficiaries' and 'qualified beneficiaries', if requested, an annual accounting of the trust's assets and transactions. Section 3(18) defines 'qualified beneficiary' to be a beneficiary who is currently receiving trust income or principal OR would receive trust income or principal if the current distributees interest is terminated. Section 67 goes on to state that a 'qualified beneficiary' may also request a copy of the trust instrument. The CT UTC has again invaded the privacy of the trust creators by mandating that they provide a personal financial accounting as well as a copy of their trust to any person who may receive a distribution from the trust, currently OR in the future.

There is language in this bill that attempts to ease these issues. Section 67 states that these rules are to be followed only when the disclosure is "reasonable" (§67(a)). However, the section does not define reasonableness. This does not provide solace to Trust Association members who now may need a court to make a determination of reasonableness. The CT UTC also allows the trust creators to 'opt out' of the disclosure rules by amending their trust as long as the trust is revocable (§5(b)). So to protect their privacy tens of thousands of people will need to pay attorneys hundreds if not thousands of dollars each to amend their trusts. This Bill becomes a "make work" bill for attorneys. Furthermore, the opt-out provision is only permitted if the trust is revocable. Therefore, once one spouse dies and the trust becomes irrevocable, the surviving spouse will have no choice but to be subjected to this invasion of privacy. People who thought they were ensuring their privacy will be irate to find that by creating a trust they have only opened themselves up to scrutiny.

Lastly, § 5(b)(11) allows the court to assume jurisdiction of an inter vivos trust when it feels it is necessary "in the interests of justice". This is a completely open-ended provision allowing the probate court to gain control over trusts that were meant to avoid probate. Currently, only §45a-175 of the Connecticut General Statutes allows a court to assume control over an inter vivos trust, and that section is balanced and limited while still providing protection. A petition under §45a-175 is limited to an accounting and does not subject the trust to the continuing jurisdiction of the probate court as this provision would. Furthermore, the petitioning beneficiary must first prove to the court that he has an interest that is sufficient to entitle him to an accounting, that the accounting is necessary and that the petition is not for the purpose of harassment. The CT UTC's §5(b)(11) is not balanced and does not contain any of these protections or limitations.

These three issues must be addressed before this massive overhaul of trust law leaves the Judiciary Committee. The Uniform Trust Code has been very controversial throughout the United States. After years of debate only 22 states have adopted it in some form. The states that have passed the Code have made such extensive changes that many consider calling it a uniform law a misnomer. Interfering with the rights of people

to plan out their estates, their rights of privacy and subjecting their estates to unwanted court supervision should not be done. If we take this approach there will be an uproar from Association members and constituents who have inter vivos trusts and want their privacy rights protected.

Respectfully submitted,

Barry D. Horowitz, JD, LLM